

**REMARKS:**

**Status of the Claims**

Claim 1 was originally filed with the case. Claim 1 was rejected in an Official Action mailed on January 24, 2007. Claim 1 was amended and claim 2 was added in a Response to Office Action filed on July 24, 2007. Claims 1 and 2 were subject to an election requirement, mailed on October 5, 2007. Applicants responded on November 7, 2007, by electing the species cipamfylline. Claims 1 and 2 are currently rejected. No claims are amended, added or canceled herein. Therefore, claims 1 and 2 remain pending.

**The Claims are Patentable Over Schudt**

The Action rejects claims 1 and 2 as being unpatentable over Schudt (U.S. Patent No. 6,333,354) in view of Applicants' admission. The Action asserts that Applicants admit in the specification that cipamfylline is a PDE-IV inhibitor and reasons that it would have been obvious to a person skilled in the art to use cipamfylline for the treatment of angiogenic disorders, such as macular edema, considering that the primary reference teaches the use of PDE-IV inhibitors for the treatment of retinopathy. The Action further argues that the skilled artisan would have been motivated to combine the teachings of the "above references," (although only one reference is cited), since one relates to the use of PDE-IV inhibitors for the treatment of angiogenic disorders, such as retinopathy, and the other relates to the claimed compound cipamfylline as a PDE-IV inhibitor.

Clearly, the Action has taken the teaching of the present application and combined it with the disclosure in Schudt that PDE inhibitors may be combined with adenylate cyclase agonists or guanylate cyclase agonists to treat disease states based on acute or chronic obstruction of vessels and/or bronchi, acute or chronic inflammation and/or edema formation

to state that it would have been obvious for one skilled in the art to treat macular edema with a PDE-IV inhibitor, such as cipamfylline. This amounts to an improper "hindsight reconstruction" of the invention based upon the teaching in the present application. *See In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). In *Fine*, the court explained that

[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

*Fine*, 5 U.S.P.Q.2d at 1600 (quoting *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983)).

Furthermore, Schudt states "the unexpected, superadditive increase in the action of an AC agonist or of a GC agonist on the level and duration of the pulmonary blood pressure due to the simultaneous administration of a PDE inhibitor shows particular suitability for the treatment of disease states such as, for example, pulmonary hypertension. ... As a result of the combination according to the invention of PDE inhibitor and AC agonist or GC agonist, the individual components can be used in concentrations which are not very active or not active at all on their own." (Col. 3, lines 16-29, emphasis added). Thus, it is submitted that it would not have been obvious to the skilled artisan to administer a PDE-IV agonist alone to treat macular edema, in light of the teaching contained in Schudt.

### **Conclusion**

This is submitted to be a complete response to the outstanding Action. Based on the foregoing arguments, the claims are believed to be in condition for allowance; a notice of allowability is therefore respectfully requested.

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The Examiner is invited to contact the undersigned attorney at (817) 551-4321 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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Date: June 23, 2008